

**UNITED STATES DISTRICT COURT  
DISTRICT OF NEVADA**

MORGAN STANLEY HIGH YIELD  
SECURITIES INC.; MORGAN  
STANLEY DEAN WITTER HIGH  
INCOME ADVANTAGE TRUST;  
MORGAN STANLEY DEAN WITTER  
HIGH INCOME ADVANTAGE TRUST  
ii; MORGAN STANLEY DEAN  
WITTER HIGH INCOME ADVANTAGE  
TRUST iii; MORGAN STANLEY  
VARIABLE INVESTMENT SERIES;  
MORGAN STANLEY DIVERSIFIED  
INCOME TRUST; and MORGAN  
STANLEY SELECT DIMENSIONS  
INVESTMENT SERIES,

Plaintiffs,

v.

HANS JECKLIN; CHRISTIANE  
JECKLIN; GEORGE HAEBERLING;  
JOHN TIPTON; SWISS LEISURE  
GROUP AG; and JPC HOLDING AG,

Defendants.

Case No. 2:05-cv-01364-LDG-LRL

**ORDER**

Defendants Hans Jecklin, Christiane Jecklin, Swiss Leisure Group AG ("SLG") and JPC Holdings AG ("JPC" and, together with Hans Jecklin, Christiane Jecklin and JPC, "Defendants") move to dismiss (#26) for lack of personal jurisdiction. The Morgan Stanley Plaintiffs oppose (#35). At issue is whether Defendants' contacts with Nevada, as

1 residents of Switzerland, constitute the requisite minimum contact that would permit this  
2 court to exercise personal jurisdiction over Defendants. As Defendants purposefully  
3 availed themselves of the privilege of conducting business in Nevada, the court finds that it  
4 is appropriate to exercise personal jurisdiction.

5 In Personam Jurisdiction

6 A two-part test establishes whether the court has personal jurisdiction over a  
7 nonresident defendant. First, the plaintiff must show that the state's long-arm statute  
8 confers personal jurisdiction over the nonresident. If so, then application of the statute  
9 must be consistent with federal due process. *FDIC v. British-American Ins. Co., Ltd.*, 828  
10 F.2d 1439, 1441 (9th Cir. 1987). Nevada's long-arm statute, Nev. Rev. Stat. §14.065,  
11 grants jurisdiction over out-of-state defendants if the cause of action arises from certain  
12 enumerated acts, including transaction of business or tortious conduct within the state.  
13 *Greenspun v. Del E. Webb Corp.*, 634 F.2d 1204, 1207 (9th Cir. 1980). This statute has  
14 been construed liberally, proscribed only by federal due process. *Levinson v. Second*  
15 *Judicial Dist. Court*, 742 P.2d 1024, 1025 (Nev. 1987). Accordingly, as the state and  
16 federal limits of jurisdiction are co-extensive, this court need not consider whether  
17 Defendants' acts technically fall within the purview of the long-arm statute. Rather, the  
18 court must decide whether the exercise of personal jurisdiction would be consistent with the  
19 requirements of federal due process. *Gordy v. Daily News, L.P.*, 95 F.3d 829, 831 (9th Cir.  
20 1996).

21 "Traditional notions of fair play and substantial justice" require that a defendant have  
22 certain "minimum contacts" with a forum state before the defendant may be subject to the  
23 court's jurisdiction. *Int'l Shoe Co. v. Washington*, 326 U.S. 310, 316 (1945). Personal  
24 jurisdiction may be either "general" or "specific." *Helicopteros Nacionales de Colombia*  
25 *S.A. v. Hall*, 466 U.S. 408, 414 nn. 8 - 9 (1984).

1 "For a defendant to be subject to general in personam jurisdiction, it must have such  
2 continuous and systematic contacts with the forum that the exercise of jurisdiction does not  
3 offend traditional notions of fair play and substantial justice." *Reebok Intern. Ltd. v.*  
4 *McLaughlin*, 49 F.3d 1387, 1391 (9th Cir. 1995). A defendant's activities in the forum must  
5 establish the defendant as "present" in the forum state. *Wells Fargo & Co.*, 556 F.2d at  
6 413.

7 When a defendant's contacts do not invoke general jurisdiction, specific jurisdiction  
8 may nevertheless be invoked if the defendant's contacts give rise to the cause of action  
9 being asserted. *Sher v. Johnson*, 911 F.2d 1357, 1361 (9th Cir. 1990). To establish that  
10 specific jurisdiction comports with due process, a plaintiff must show: (1) that the  
11 nonresident defendant purposefully availed itself of the privilege of conducting activities in  
12 the forum, invoking the benefits and protections of its laws; (2) that the claim arises out of  
13 the defendant's forum-related activities; and (3) that the exercise of jurisdiction is  
14 reasonable. *Farmers Ins. Ex. v. Portage La Prairie Mut. Ins. Co.*, 907 F.2d 911, 913 (9th  
15 Cir. 1990).

16 Even if the defendant's contacts render it subject to the forum's jurisdiction, the  
17 assertion of general or specific jurisdiction must be reasonable. *Amoco Egypt Oil Co. v.*  
18 *Leonis Navigation Com., Inc.*, 1 F.3d 848, 851 (9th Cir. 1993). In determining  
19 reasonableness, the court considers seven factors.

20 (1) the extent of the defendants' purposeful interjection into the forum state's  
21 affairs; (2) the burden on the defendant of defending in the forum; (3) the  
22 extent of conflict with the sovereignty of the defendants' state; (4) the forum  
23 state's interest in adjudicating the dispute; (5) the most efficient judicial  
24 resolution of the controversy; (6) the importance of the forum to the plaintiff's  
25 interest in convenient and effective relief; and (7) the existence of an  
26 alternative forum.

1 *Harris Rutsky & Co. Ins. Services, Inc. v. Bell & Clements, Ltd.*, 328 F. 3d 1122, 1132 (9th  
2 Cir. 2003). No factor is dispositive in itself, and the court must balance all seven factors.  
3 *Id.*

4 Finally, the court notes that the plaintiff has the burden of establishing that the court  
5 has personal jurisdiction over the defendant. *Ziegler v. Indian River County*, 64 F.3d 470,  
6 473 (9th Cir. 1995). While a plaintiff ultimately bears the burden of proving by a  
7 preponderance of the evidence that jurisdiction is appropriate, on a motion to dismiss and  
8 in the absence of an evidentiary hearing, a plaintiff must only make a prima facie showing  
9 of jurisdictional facts. *Sher v. Johnson*, 911 F.2d 1357, 1361 (9th Cir. 1990).  
10 Nevertheless, the court may properly consider written submissions by the parties, such as  
11 deposition transcripts, declarations, and other evidence. *Omeluk v. Langsten Slip &*  
12 *Batbyggeri A/S*, 52 F.3d 267, 268 (9th Cir. 1995).

13 In this case, Morgan Stanley seeks to enforce a New York federal district court  
14 judgment against Seven Circle Gaming Corporation ("SCGC") for default on a Note  
15 Purchase Agreement by piercing the corporate veil of SCGC and holding Defendants, in  
16 their individual capacities, liable for the Note Purchase Agreement. Morgan Stanley  
17 argues that Defendants' contacts meet the burden of both general and specific personal  
18 jurisdiction in Nevada, and that Nevada's jurisdiction over Defendants is reasonable.  
19 According to Morgan Stanley, Defendants purposely availed themselves of the privilege of  
20 conducting activities in Nevada, and invoking the benefits and protections of Nevada's  
21 laws, (1) by acquiring a Nevada gaming license, (2) by SLG and JPC's conducting  
22 business in Nevada, (3) by way of the Jecklins' ownership of a home in Las Vegas for  
23 personal use, and (4) based upon the Jecklins' personal investment in the Resort at  
24 Summerlin.

25 Defendants argue that their contacts with Nevada are not sufficient to invoke  
26 jurisdiction because (1) they are protected by the fiduciary shield doctrine, (2) none of

1 them is present in the State of Nevada, and (3) they never conducted any personal  
2 business in Nevada. Defendants argue that it would be an unreasonable burden on them,  
3 as citizens of Switzerland, to litigate this dispute in Nevada. Furthermore, they point out  
4 that Switzerland will not recognize ultimately a judgment from Nevada, and because they  
5 have no assets in Nevada, Morgan Stanley will have to bring its claims in Switzerland.

6 Specific Jurisdiction

7 The Plaintiffs have made a prima facie showing that this court has specific in  
8 personam jurisdiction over the Defendants<sup>1</sup>. Both SLG and JPC were registered as doing  
9 business in Nevada to aid in the development of SCGC and the Resort at Summerlin.  
10 Even if, as the Defendants argue, SLG and JPC never conducted any business in Nevada  
11 besides obtaining a license, voluntary compliance with a state's corporation law is a  
12 contact which facilitates significant privileges for conducting activities within that state.  
13 Furthermore, the business licenses, as well as Morgan Stanley's claims, arise out of  
14 activities surrounding the Resort at Summerlin. Therefore, the exercise of personal  
15 jurisdiction over SLG and JPC is proper.

16 Exercising specific jurisdiction over Hans and Christiane Jecklin is also proper.  
17 The Jecklins admit to having contacts with Nevada, but argue the fiduciary shield doctrine<sup>2</sup>  
18 protects them from jurisdiction in Nevada because their contacts were exclusively on  
19 behalf of SCGC. However, owning a private residence in Nevada and making significant  
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21 <sup>1</sup>The court does not address whether general jurisdiction exists over the Defendants  
22 because of the finding of specific jurisdiction. However, the court notes that the  
23 Defendants' contacts with Nevada from January 1998 to the time of filing, taken as a  
24 whole, appear to have been continuous and systematic. See *Access Telecom, Inc. v. MCI  
Telecomm. Corp.*, 197 F.3d 694, 717 (5th Cir. 1999) (concluding general jurisdiction should  
"be assessed by evaluating contacts of the defendant with the forum over a reasonable  
number of years, up to the date the suit was filed").

25 <sup>2</sup>The fiduciary shield doctrine protects a corporate officer or employee from a court  
26 exercising personal jurisdiction over him for contacts obtained while acting on behalf of his  
employer. See *Pocahontas First Corp. v. Venture Planning Group, Inc.*, 572 F.Supp. 503,  
508 (D. Nev. 1983).

1 investments in The Resort at Summerlin , albeit through other companies, represent  
2 significant personal contacts. The Jecklins do not deny that they were the title-owners of  
3 the home, or that they made personal use of it at times. Indeed, even if the Jecklins  
4 primarily conducted business out of the home, Morgan Stanely has presented sufficient  
5 *prima facie* evidence that SCGC was Defendants' alter ego, which would lift the fiduciary  
6 shield. See *Hoag v. Sweetwater Int'l*, 857 F. Supp. 1420, 1426 (D. Nev. 1994) ("The  
7 corporate form may be ignored, and jurisdiction over the individual officer allowed, in cases  
8 in which the corporation is the agent or alter ego of the defendant").

9 Reasonableness

10 A majority of factors used to determine whether exercising personal jurisdiction is  
11 reasonable favors asserting jurisdiction over the Defendants. Defendants purposely  
12 interjected themselves into activities in Nevada by, as demonstrated above, obtaining  
13 business licenses and owning a home for personal use. Regarding sovereignty  
14 considerations, the presence or absence of a defendant's connections to the United States  
15 is determinative. *Core-Vent Corp. v. Nobel Indus. AB*, 11 F.3d 1482, 1489 (9th Cir. 1993).  
16 The presence of a subsidiary is also a significant consideration in evaluating sovereignty  
17 concerns. *Caruth v. Int'l Psychoanalytical Ass'n*, 59 F.3d 126, 129 (9th Cir. 1995). Here,  
18 Defendants do not dispute their connections to Nevada, including SCGC's location in Las  
19 Vegas. The forum's interest in adjudicating the dispute and the most efficient judicial  
20 resolution of the controversy favors exercising jurisdiction because Nevada has a  
21 legitimate interest in litigating alter ego claims involving gambling entities, and its  
22 experience with such entities can provide efficient judicial resolution of the controversy.  
23 See *Rio Prop., Inc. v. Rio Int'l Interlink*, 284 F.3d 1007, 1021 (9th Cir. 2002) (as the  
24 gambling center of the United States, Nevada has an expertise in resolving disputes  
25 involving gambling entities). Additionally, relevant witnesses and documents are located in  
26 Nevada. As to the convenience and effectiveness of relief available to Morgan Stanley,

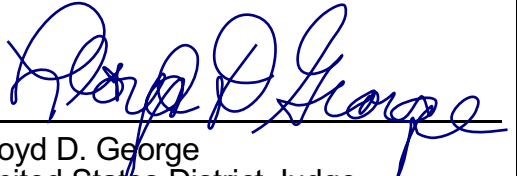
1 litigating its claim in Switzerland, instead of Nevada, presents an obvious inconvenience,  
2 although "this factor is not of paramount importance." *Harris Rutsky*, 328 F.3d at 1133.

3 The burden on Defendants of litigating in the forum and the existence of an  
4 alternative forum weigh in Defendants' favor, although neither of these factors is  
5 particularly significant. Defendants' burden of traveling to Nevada is mitigated by the fact  
6 that Defendants traveled to Nevada seven or eight times per year during the period  
7 relevant to the suit. See *Mirage Casino-Hotel v. Caram*, 762 F.Supp. 286, 289 (D. Nevada  
8 1991) (holding Defendant's burden is relatively small because he traveled to Nevada an  
9 average of six times per year). Furthermore, "modern advances in communications and  
10 transportation have significantly reduced the burden of litigating in another country." *Harris*  
11 *Rutsky*, 328 F.3d at 1133. Finally, while Switzerland appears to be an alternative forum,  
12 the parties disagree whether Switzerland would recognize a judgment in this case. In any  
13 event, because Morgan Stanley intends to enforce a judgment in any forum where  
14 Defendants' assets are located, Swiss recognition of the judgment is not controlling. Nor  
15 has there been any showing that Switzerland, or any other alternative forum, is more  
16 reasonable than Nevada.

17 The most substantial factors favor a finding of reasonableness in asserting  
18 jurisdiction. *CE Distrib., LLC v. New Sensor Corp.*, 380 F.3d 1107, 1112-13 (9th Cir. 2004)  
19 (finding that exercising jurisdiction is proper where a plurality of the factors favor  
20 jurisdiction over the defendant). Accordingly, for good cause shown,

21 THE COURT **ORDERS** that Defendants' Motion to Dismiss (#4) for lack of personal  
22 jurisdiction is DENIED.

23 DATED this 28 day of July, 2006.

24  
25   
26 Lloyd D. George  
United States District Judge